



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCC/145563

PRELIMINARY RECITALS

Pursuant to a petition filed November 28, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 10, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly terminated the Petitioner's BadgerCare Core Plan benefits effective May 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 5, 2012, the Petitioner submitted a renewal application for BadgerCare Core Plan benefits.

3. On April 6, 2012, the agency issued a Notice of Decision to the Petitioner informing him that his BadgerCare Core Plan benefits would end effective May 1, 2012 for non-payment of the \$60 application processing fee. The notice informed the Petitioner of the right to appeal the agency's determination by filing an appeal with the Division of Hearings and Appeals by June 18, 2012.
4. On April 6, 2012, the agency issued a separate notice to the Petitioner informing him that he must submit a \$60 processing fee by April 15, 2012 in order to be eligible for BadgerCare Core Plan benefits. Instructions for payment of the fee were included.
5. The Petitioner did not pay the \$60 processing fee. Effective May 1, 2012, the Petitioner's BadgerCare Core benefits were terminated.
6. On November 28, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Sections 49.45(5), Wis. Stats. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The Petitioner's appeal was filed 182 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

As dicta, even if there was jurisdiction, I note that the handbook requires payment of a non-refundable processing fee before an application for BadgerCare Core Plan can be processed, unless the fee is waived because the applicant or member is homeless or a tribal member. If the fee is not paid the application will be withdrawn and will not be processed. BadgerCare Plus Handbook, § 43.4.2.

At the hearing, the Petitioner did not dispute that the fee was not paid. He testified that, prior to this latest application, he had been homeless and was not required to pay the fee. Though he is no longer homeless, he is not currently employed and therefore was unable to pay the fee. The Petitioner is seeking equitable relief – that is, he is requesting an exception to the regulations. I certainly recognize the difficulties the Petitioner is facing. Unfortunately, I am unable to provide the relief he is seeking.

CONCLUSIONS OF LAW

The Petitioner's appeal is not timely.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

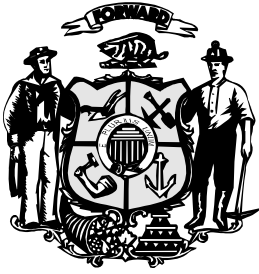
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of February, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 12, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability